

REMARKS

Claims 38, 39, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 57, 59, 61, 62, 63, 64, 65, 66, 74, 75, 83, 84, 86, 87, 90, 91, 93 and 94 are generic to a plurality of disclosed patentably distinct species comprising:

- A. A specific species of tissue specific enhancers selected from a list consisting of DF3, breast cancer specific enhancer, viral enhancer, steroid receptor enhancer, as recited in claims 41, 55.
- B. A specific species of tissue specific promoter selected from a list consisting of MUC 1/DF3 promoter, α -fetoprotein promoter, erb-B2 promoter, surfactant promoter, Thymidine Kinase promoter, p21 promoter, cyclin promoter, as recited in claims 40, 54, 67, 76, 85, 92.
- C. A specific species of replication essential transcription factor gene selected from a list consisting of E1a, E1b, E2, E4, as recited in claims 60, 68, 69, 70, 71, 72, 77, 78, 79, 80 and 81.
- D. A specific species of coding sequence selected from a list consisting of Thymidine Kinase, Cytosine Deaminase, Purine Nucleoside Phosphorylase, as recited in claims 42, 50, 56, 58, 73, 82, 88, 89, 95, and 96.

Responsive to the Restriction/Election of Species Requirement dated March 28, 2006,
Applicants elect:

- A: a viral enhancer as the tissue specific enhancer (recited in Claims 41 and 55);
- B: an alpha-fetoprotein promoter as the tissue specific promoter (recited in Claims 40, 54, 67, 76, 85 and 92);
- C: E1a as the transcription factor (recited in Claims 38-96); and
- D: thymidine kinase as the coding sequences (recited in Claims 42, 50, 56, 58, 73, 82, 88, 89, 95 and 96), for further prosecution at this time.

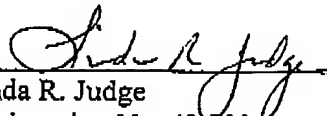
Applicants make the above-recited elections with traverse and request consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

CONCLUSION

Applicants submit that the application is now in condition for examination on the merits. Early notification of such action is earnestly solicited. If any issues remain which the Examiner feels may be best resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact Applicants counsel, Linda R. Judge at (415) 836-2586.

Respectfully submitted,

DLA PIPER RUDNICK GRAY CARY US LLP


Linda R. Judge
Registration No. 42,702

153 Townsend Street
Suite 800
San Francisco, CA 94107-1957